

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6053 of 1998

with

SPECIAL CIVIL APPLICATION No 10742 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

KAILAS BABU NAT THROUGH HIS WIFE MODIBEN KAILASH NAT

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Petitioner

Mr.C.C.Bhalja, A.G.P. for Respondent No. 1, 2, 3

(in both matters)

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 11/02/99

ORAL COMMON JUDGEMENT

1. These two writ petitions under Article 226 of the
Constitution of India can be disposed of by a common
order inasmuch as in both the writ petitions the same
detention order dated 11.7.1998 has been challenged by

the detenu and his wife. Petition No.6053 of 1998 has been filed by the wife of the detenu, whereas the other petition has been filed by the detenu himself.

2. On 11.7.1998 the Police Commissioner, Ahmedabad city passed the impugned order of detention, Annexure : C to the writ petition, against the petitioner and the husband of the other petitioner, treating the detenu to be bootlegger and finding that his bootlegging activities were prejudicial for maintenance of public order. Thus, this order has been challenged in these petitions under Article 226 of the Constitution of India on two grounds, firstly that the representation of the detenu was not considered by the State Government and secondly that the activities of the detenu did not amount to activities prejudicial for maintenance of public order. Hence the impugned detention order is invalid.

3. The first ground of attack has no substance in view of Para : 7 of the Counter Affidavit of Shri J.R.Rajput, Under Secretary to the Government of Gujarat. In Para : 7 of his Counter Affidavit he has deposed that the representation dated 20.7.1998 sent by the detenu through Jail Authority, Surat, was received in the Home Department in the evening of 22.7.1998. The time taken between 20.7.1998 to 22.7.1998 can therefore not be considered as delay for which explanation by the State Government is required. Since it was received in the evening of 22.7.98 it was handed over to the dealing assistant on 23.7.1998. It was processed and submitted to the Section Officer on 24.7.1998. 25.7.98 and 26.7.98 were holidays. The representation, therefore, reached the Principal Secretary, Home, on 27.7.1998 and it was rejected on 28.7.1998. It is further mentioned in this counter Affidavit that the rejection order was communicated to the detenu vide letter dated 28.7.1998. There is thus no merit in the contention that the order rejecting the representation was not communicated to the detenu or that there was delay in disposal of the representation.

4. However, the next point has substance and force. On account of registration of single case under the Bombay Prohibition Act, and the activities of the petitioner narrated by the three confidential witnesses he was rightly considered by the detaining Authority to be a bootlegger within the definition of Section 2(b) of the PASA. However, merely on account of petitioner's involvement in bootlegging activities he could not be preventively detained. Further requirement is that his activities should have been prejudicial for maintenance

of public order. Distinction between law and order and the public order has been settled in a catena of decisions by the Apex Court, but I think those decisions are not in the knowledge of the detaining Authority or he is deliberately flouting those decisions and passing frivolous orders on the premises that trivial activities of the petitioner amounts to situation prejudicial for maintenance of public order.

5. Registration of one case under the Bombay Prohibition Act cannot be considered to be activities prejudicial for maintenance of public order inasmuch as there is no disclosure that when 720 ltrs. country made liquor were recovered from the Auto-rickshaw and motor cycle of the petitioner he offered resistance to search and seizure or committed activities prejudicial for maintenance of public order. Hence this registered offence cannot be pressed in service for adjudging the activities of the petitioner being prejudicial for maintenance of public order. It was a situation where law contained in Bombay Prohibition Act was violated for which the petitioner was sufficiently booked under the aforesaid Act.

6. The three incidents quoted by the confidential witnesses are again stereo-type incidents and the witnesses have made statements in a parrot like manner. One incident is that the petitioner went to the witness with certain quantity of country made liquor and asked him to store the same in his house upon which the witness refused and then minor scuffle took place and beating also resulted. In the second incident the petitioner wanted vehicle of the witness for transporting his liquor and upon refusal of the witness the petitioner beat the witness. This is also nothing but usual story which is coming to the notice of the court at least in 90% of the cases.

7. The third incident is also usual repetition that on mere suspicion of the petitioner that the witness was keeping watch over his activities and was probably police informer that the incident occurred.

8. Even if these three incidents occurred no reasonable man could say that even tempo of the life of the society or the community where such incidents took place was disturbed or affected. Consequently these activities and the incidents were also not prejudicial for maintenance of public order. The detention order passed against the petitioner is therefore patently illegal and invalid. It has, therefore, to be quashed.

9. The result, therefore, is that the writ petition No.10742/98 succeeds and is hereby allowed. The impugned order of detention dated 11.7.1998 passed against the detenu is quashed. The detenu shall be released from the custody forthwith unless wanted in some other case. The connected writ petition No.6053/98, in view of this order, has become infructuous and is rejected as infructuous.

sd/-

Date : February 11, 1999 (D. C. Srivastava, J.)

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